

MONTANA LEGISLATIVE HISTORY

Chapter 268 19 91

Bill H _____ S 97 Original bill & history ☒ c

H. Committee on ~~Q222~~ FISH & GAME

Hearing Date(s) 3/5 X c

EXEC. ACTION 3/7 X c

_____ c

_____ c

Date Out _____ c

S. Committee on FISH & GAME

Hearing Date(s) 1/22 X c

EXEC. ACTION 1/29 X c

_____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1/15 INTRODUCED
 1/15 FIRST READING
 1/15 REFERRED TO TAXATION
 1/15 FISCAL NOTE REQUESTED
 1/18 FISCAL NOTE RECEIVED
 1/19 FISCAL NOTE PRINTED
 1/22 HEARING
 1/22 TABLED IN COMMITTEE

*

SB 97 INTRODUCED BY T. BECK, ET AL
 ESTABLISH PROCEDURES FOR POSTING PRIVATE LAND ALONG
 PUBLIC ROAD

1/15 INTRODUCED
 1/15 FIRST READING
 1/15 REFERRED TO FISH & GAME
 1/24 HEARING
 1/29 HEARING
 1/30 COMMITTEE REPORT—BILL PASSED AS AMENDED
 2/01 2ND READING PASSED 50 0
 2/02 3RD READING PASSED 46 0

TRANSMITTED TO HOUSE
 2/04 FIRST READING
 2/04 REFERRED TO FISH & GAME
 3/05 HEARING
 3/09 COMMITTEE REPORT—BILL CONCURRED
 3/12 2ND READING CONCURRED AS AMENDED 94 5
 3/14 3RD READING CONCURRED 89 11

RETURNED TO SENATE
 3/16 2ND READING AMENDMENTS CONCURRED 49 0
 3/18 3RD READING AMENDMENTS CONCURRED 48 1
 3/23 SIGNED BY PRESIDENT
 3/23 SIGNED BY SPEAKER
 3/25 TRANSMITTED TO GOVERNOR
 3/29 SIGNED BY GOVERNOR
 CHAPTER NUMBER 268
 EFFECTIVE DATE: 10/01/91

SB 98 INTRODUCED BY JERGESON
 REQUIRE APPROPRIATE RESPONSE BY ATTORNEY TO A LOCAL
 GOVERNMENT AUDIT

1/15 INTRODUCED
 1/16 REFERRED TO LOCAL GOVERNMENT
 1/16 FIRST READING
 1/22 HEARING
 1/23 COMMITTEE REPORT—BILL PASSED AS AMENDED
 1/24 2ND READING PASSED 50 0
 1/25 3RD READING PASSED 49 0

TRANSMITTED TO HOUSE
 1/26 FIRST READING
 1/26 REFERRED TO LOCAL GOVERNMENT
 3/05 HEARING
 3/06 COMMITTEE REPORT—BILL CONCURRED
 3/09 2ND READING CONCURRED 90 0
 3/11 3RD READING CONCURRED 99 0
 RETURNED TO SENATE
 3/15 SIGNED BY PRESIDENT
 3/16 SIGNED BY SPEAKER
 3/16 TRANSMITTED TO GOVERNOR
 3/21 SIGNED BY GOVERNOR
 CHAPTER NUMBER 128
 EFFECTIVE DATE: 10/01/91

SB 99 INTRODUCED BY HARP, ET AL
 PROVIDE A PREFERENCE FOR PRIVATELY OPERATED SOLID
 WASTE MANAGEMENT SYSTEMS
 BY REQUEST OF ENVIRONMENTAL QUALITY COUNCIL

1/15 INTRODUCED
 1/16 REFERRED TO LOCAL GOVERNMENT
 1/16 FIRST READING
 1/16 FISCAL NOTE REQUESTED
 1/22 FISCAL NOTE RECEIVED
 1/23 FISCAL NOTE PRINTED
 2/19 HEARING
 2/22 COMMITTEE REPORT—BILL PASSED AS AMENDED
 2/23 2ND READING PASSED 49 0
 2/25 3RD READING PASSED 47 2

TRANSMITTED TO HOUSE
 3/04 FIRST READING
 3/04 REFERRED TO NATURAL RESOURCES
 3/19 HEARING
 3/21 COMMITTEE REPORT—BILL CONCURRED AS AMENDED
 4/05 2ND READING CONCUR AS AMENDED
 MOTION FAILED 47 51

SB 100 INTRODUCED BY HOCKETT
 REMOVE ATTORNEY GENERAL APPROVAL OF
 INTERLOCAL AGREEMENTS

1/15 INTRODUCED
 1/16 REFERRED TO LOCAL GOVERNMENT
 1/16 FIRST READING
 1/24 HEARING
 1/25 COMMITTEE REPORT—BILL PASSED
 1/26 2ND READING PASSED 46 0
 1/28 3RD READING PASSED 47 0

TRANSMITTED TO HOUSE
 1/29 FIRST READING
 1/29 REFERRED TO LOCAL GOVERNMENT
 3/05 HEARING
 3/06 COMMITTEE REPORT—BILL CONCURRED
 3/06 PLACED ON CONSENT CALENDAR
 3/08 3RD READING CONCURRED 97 0

RETURNED TO SENATE
 3/12 SIGNED BY PRESIDENT
 3/14 SIGNED BY SPEAKER
 3/14 TRANSMITTED TO GOVERNOR
 3/19 SIGNED BY GOVERNOR
 CHAPTER NUMBER 83
 EFFECTIVE DATE: 10/01/91

SB 101 INTRODUCED BY REA
 PSC REGULATION OF MOTOR CARRIERS TRANSPORTING UNDER
 GOVERNMENT CONTRACTS
 BY REQUEST OF PUBLIC SERVICE COMMISSION

1/15 INTRODUCED
 1/16 REFERRED TO HIGHWAYS & TRANSPORTATION
 1/16 FIRST READING
 1/24 HEARING
 2/13 TABLED IN COMMITTEE

SB 102 INTRODUCED BY NATHE, ET AL
 ALLOW VOLUNTEER FIREFIGHTERS TO RECEIVE WORKERS'
 COMPENSATION COVERAGE

SENATE BILL NO. 97

INTRODUCED BY T. BECK, MCCAFFREE

IN THE SENATE

JANUARY 15, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON FISH & GAME.

 FIRST READING.

JANUARY 30, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 31, 1991 PRINTING REPORT.

FEBRUARY 1, 1991 SECOND READING, DO PASS.

FEBRUARY 2, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 46; NOES, 0.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON FISH & GAME.

 FIRST READING.

MARCH 9, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 12, 1991 SECOND READING, CONCURRED IN AS
AMENDED.

MARCH 14, 1991 THIRD READING, CONCURRED IN.
AYES, 89; NOES, 11.

 RETURNED TO SENATE.

IN THE SENATE

MARCH 16, 1991 RECEIVED FROM HOUSE.

 SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 18, 1991 THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 97
2 INTRODUCED BY Buck McCallister
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING PROCEDURES
5 FOR THE POSTING OF PRIVATE LAND ALONG PUBLIC ROADS;
6 REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO
7 ENFORCE POSTING REQUIREMENTS; AND AMENDING SECTION 45-6-201,
8 MCA."
9

10 WHEREAS, the Attorney General in 42 A.G. Op. 96 (1988),
11 held that private property along public roadways may not be
12 closed to public access through the use of orange markings
13 placed on posts located where the road enters the private
14 property; and

15 WHEREAS, the Legislature desires to address the problem
16 of adequate posting of private land while ensuring proper
17 public access to public roads and the proper inclusion of
18 county road mileage for gas tax purposes.
19

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 **Section 1.** Section 45-6-201, MCA, is amended to read:

22 "45-6-201. Definition of "enter or remain unlawfully".

23 (1) A person enters or remains unlawfully in or upon any
24 vehicle, occupied structure, or premises when he is not
25 licensed, invited, or otherwise privileged to do so.

1 Privilege to enter or remain upon land is extended either by
2 the explicit permission of the landowner or other authorized
3 person or by the failure of the landowner or other
4 authorized person to post notice denying entry onto private
5 land. Such The privilege may be revoked at any time by
6 personal communication of notice by the landowner or other
7 authorized person to the entering person.

8 (2) To be provide for effective posting of private land
9 through which the public has no right-of-way under this
10 section, the notice provided for in subsection (1) must
11 satisfy the following requirements:

12 (a) notice must be placed on a post, structure, or
13 natural object by marking it with written notice or with not
14 less than 50 square inches of fluorescent orange paint,
15 except that when metal fenceposts are used, the entire post
16 must be painted; and

17 (b) the notice described in subsection (2)(a) must be
18 placed at each outer gate and normal point of access to the
19 property, including both sides of a water body crossing the
20 property wherever the water body intersects an outer
21 boundary line.

22 (3) To provide for effective posting of private land
23 through which the public has the right-of-way by means of a
24 public road, a landowner shall:

25 (a) place a conspicuous sign on the edge of the roadway

1 upon entering the private land, stating "PRIVATE PROPERTY,
2 NO TRESPASSING OFF ROAD NEXT MILES"; or

3 (b) place conventional no trespassing signs at regular
4 intervals along the private land bordering the road.

5 ~~†3†~~(4) If property has been posted in substantial
6 compliance with subsection (2) or (3), it is considered
7 closed to public access unless explicit permission to enter
8 is given by the landowner or his authorized agent.

9 ~~†4†~~(5) The department of fish, wildlife, and parks
10 shall attempt to educate and inform all persons holding
11 hunting, fishing, or trapping licenses or permits by
12 including on any publication concerning ~~such the~~ licenses or
13 permits, in condensed form, the provisions of this section
14 concerning entry on private land. The department shall use
15 public media, as well as its own publications, in attempting
16 to educate and inform other recreational users of the
17 provisions of this section. The department shall enforce the
18 posting provisions set out in subsections (2) and (3).

19 ~~†5†~~(6) For purposes of this section, "land" means land
20 as defined in 70-15-102.

21 ~~†6†~~(7) In no event ~~shall~~ may civil liability be imposed
22 upon the owner or occupier of premises by reason of any
23 privilege created by this section."

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By Bob Williams, on January 22, 1991, at 1:00 P.M.

ROLL CALL

Members Present:

Bob Williams, Chairman (D)
Don Bianchi, Vice Chairman (D)
John Jr. Anderson (R)
Eve Franklin (D)
Lorents Grosfield (R)
Greg Jergeson (D)
Dick Pinsoneault (D)
David Rye (R)
Paul Svrcek (D)

Members Excused: Senator Swift

Staff Present: Andrea Merrill (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Chairman Williams called meeting to order. Roll was taken and noted.

Testimony on SB 13 will be discussed and Executive Action will be taken on Thursday, January 24, 1991.

HEARING ON SB 97

Presentation and Opening Statement by Sponsor:

Senator Tom Beck, Dist. 24, said this is an act to establish procedures for posting of private land along public roads requiring the Fish, Wildlife and Parks to enforce posting requirements. This Bill is the result of an Attorney General's Opinion which was asked for on the trespassing notices that were placed along county right-of-way. At times there was posting that made a public road appear to be a private road and the Attorney General's Opinion said that private property that is unfenced along public roadways may not be closed to public access by the use of orange markings placed on posts located where the road enters the private property. The bill will allow persons to

post that private land but they will have to place their sign back far enough to allow the public to know that the land is posted but the road is not.

Proponents' Testimony:

Gordon Morris, Executive Director of the Montana Association of Counties, testified. The Attorney General's Opinion came in July, 1988. See Exhibit No. 1. The counties did not have time to do anything in the 1989 Session and consequently did adopt a resolution at the June Convention 1990 that specifically requested legislation be sought to alleviate the problem that resulted from the posting provisions that were adopted by the Legislature in 1987. On Page 2, Exhibit No. 1, the AG's Opinion identifies the fact "that the immediate problem with posting is that orange paint on either side of an entry through a fence line typically indicates that all property beyond the markings is closed to access". That means that if a person traveling in an unfamiliar area sees the postings, either with surveyor tape or paint, it is not clear and unambiguous that the road is not itself private. He continues to say "that the landowner's intent here is clear. Unfortunately, the liberal posting requirements of revised criminal trespass statutes were not designed for application in the present situation."

This is a serious matter for counties from another perspective for after the 1987 Session, the Department of Highways began to measure roads relative to the federal gas tax Allocation. Gas tax allocation in the State of Montana is based on the number of miles of public roads in each county. As the bill is now written, when the Dept. of Highways came to the posting of private land, they would assume that all roadways past the posting was private and closed to public access. Therefore, there was a reduction in the number of miles they had in terms of the federal gas tax allocation. What the counties believe SB 97 will correct is to alleviate the problem so that property can be signed on either side of the road to be closed to public trespass and at the same time clearly indicate that the roadway itself is a public right-of-way. It is my opinion that SB 97 does accomplish this fact.

Lorna Frank. See Exhibit No. 2.

Robert VanDerVere, Helena, believes this is a good bill and a long-time coming. The Committee should consider that when a landowner posts his land near a public road he should sign it.

K.L. Cool, Director of Fish, Wildlife and Parks. See Exhibit 3.

Senator Grosfield, Dist. No. 41, believes this is a problem that needs to be addressed. He suggested some amendments that may the meaning. (The suggested amendments were given to Legislative Council, Andrea Merrill for her consideration.)

Opponents' Testimony:

No opponents testifying at this time.

Questions From Committee Members:

Senator Pinsoneault questioned Director Cool if he had a chance to look at Senator Grosfield's suggested amendments. Director Cool stated that the Department would accept all amendments except for the one where it would require the Department to provide specific signs.

Senator Bianchi questioned Senator Beck if a sign upon entering private property on an unfenced road and a sign when leaving the private property, would not be beneficial for the public. Senator Beck said that posting both ends of the private property would be helpful, but it appeared it would have to be posted going both directions. He also stated that the intent of the bill is that if someone is violating the trespass law the Department will enforce that provision.

Senator Pinsoneault questioned Senator Beck if it would not be the landowner's responsibility for placing the signs on their property. Senator Beck replied "Yes."

Senator Pinsoneault suggested that if the "NO TRESPASSING" signs were for an area of 6 miles or more that a "LEAVING POSTED AREA" sign would be helpful. Senator Beck commented that he would leave the posting language of the unfenced property requirement up to the Senate Fish and Game Committee. He did not want to burden the landowner any more than necessary.

Senator Grosfield questioned Senator Beck if this bill coordinates with one on a landowner who incorrectly posts public land. Senator Beck stated he was unfamiliar with the law and offered to let someone else address the question. Stan Bradshaw responded by advising that bill was HB 33 which intended to get at specific intentional abuse.

Senator Anderson commented that none of their land is posted nor do they intend to post. They follow the block management plan. The Fish and Game have been posting signs on the main access through the property and some problems are arising. Some people put locked gates on roads that were public access.

Senator Bianchi commented that for hunting and fishing laws the Department of Fish and Wildlife was responsible for trespass laws and for criminal trespass laws the county sheriff's department has responsibility. Will this new bill give the responsibility only to the Department, and if it does, why are we excluding the sheriff's department? Would it be better to have a joint function of both the Department and the sheriff's department to enforce the trespass laws of the State. Director Cool stated

that if the amendment that the department is requesting is approved by the Committee that the status quo would remain. The criminal trespass laws would continue to fall to the local county authorities. It would continue to be a shared responsibility.

Chairman Williams questioned Gordon Morris if he would approve of the amendments suggested by Senator Grosfield. Mr. Morris advised that SB 97 went through four legislative drafts. It became obvious to the drafters that there was little reason to argue fenced versus unfenced that if it is private property, fences are beside the point.

Chairman Williams commented that when considering this bill, it will be necessary to know who will be enforcing the law, how rigid they will be and have good communications between the Department and the people in the field who will be enforcing it so that it does not become a harassment but a future law that will be doing what it was intended.

Closing by Sponsor:

Senator Beck agreed that the terminology of the bill is important. This bill will address a problem.

Chairman Williams requested Andrea Merrill to peruse the amendments and report back to the Committee on Tuesday, January 29, 1991.

ADJOURNMENT

Adjournment At: 1:43P.M.


SEN. BOB WILLIAMS, Chairman

JULIA LEVENS, Secretary

BW/jl

VOLUME NO. 42

HIGHWAYS - "No Trespassing" notice along unfenced private property lying adjacent to county road;

TRESPASS - Use of "No Trespassing" notice on unfenced property lying adjacent to public road;

MONTANA CODE ANNOTATED - Section 45-6-201.

HELD: Private property that is unfenced along public roadways may not be closed to public access through the use of orange markings placed on posts located where the road enters the private property.

13 July 1988

Wm. Nels Swandal
Park County Attorney
Park County Courthouse
Livingston MT 59047

Dear Mr. Swandal:

You have asked my opinion on the following question:

May "No Trespassing" notices be placed within a county road right-of-way on the posts of a fenceline that lies perpendicular to the road and delineates private property that a landowner desires to close to public access?

Your opinion request evolved through the interaction of three groups: landowners who desire to post their property in compliance with the revised criminal no-trespassing statute, § 45-6-201, MCA; sportsmen who desire enhanced public access and claim the "No Trespassing" signs mislead the public; and Park County officials who seek to settle the dispute while protecting the integrity of the county road right-of-way.

The county roads in question are public rights-of-way that run through private property that is unfenced along the roadway. Occasionally the roadways cross a property line that divides two parcels held in separate ownership. On these property lines the landowners erect fences, often in conjunction with stock gates across the road surface. The fences separate one grazing field from another, but the county road that bisects the open pasture is otherwise unfenced along its route.

The owners of these pastures have adopted an easy method of posting their fields closed to trespassing. Upon the assumption that the point at which the public road crosses the fenceline and cattle gate is an access

point, the owners have painted orange the posts on either side of the grate. This assumption is based upon the revised criminal trespass statute, § 45-6-201, MCA. That statute provides that orange paint on fence posts may be used to give notice of no trespassing. The statute contains several requirements that must be met before property is considered closed. One such requirement is that each "normal point of access" must be posted with the proper amount of orange paint. Apparently, the landowners have attempted to convey to motorists that the property on either side of the road, following the orange marking, is closed to the public.

The immediate problem with this practice of posting is that orange paint on either side of an entry through a fenceline typically indicates that all property beyond the marking is closed to access. On similar facts the Montana Supreme Court recently upheld the criminal trespass conviction of a motorist who inadvertently drove down a road through a gate marked with orange paint. State v. Blalock, 45 St. Rptr. 1008, ___ P.2d ___ (1988). The landowners in your request are unable to convey through their orange marking that a motorist may cross the fenceline, enter the next field, stay on the roadway and not actually trespass. As the sportsmen's group has brought to your attention, this form of posting will likely mislead the public.

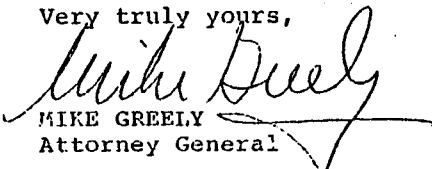
The landowners' intent here is clear. Unfortunately, the liberal posting requirements of the revised criminal trespass statute were not designed for application to the present situation. I doubt that the Legislature anticipated or contemplated the factual situation of an unfenced public right-of-way crossing fields that landowners wanted closed. The points of access for these fields actually run the entire length of the unfenced public road. The situation simply does not lend itself to easy and unambiguous posting.

Landowners who desire the result of effective posting without additional fence construction must therefore pursue alternatives to orange markings. One alternative would be to place a conspicuous sign on the roadway's edge upon entering the private property stating "Private Property, No Trespassing Next ___ Miles." Another alternative would be to place conventional "No Trespassing" signs at regular intervals along the private property bordering the road. In any case, the present practice of painting the posts adjoining the roadway at a fenceline is a misapplication of the notice provisions of section 45-6-201, MCA. The misapplication not only fails to legally close the adjacent property to trespassing but also inhibits the public's use and enjoyment of the road.

THEREFORE, IT IS MY OPINION:

Private property that is unfenced along public roadways may not be closed to public access through the use of orange markings placed on posts located where the road enters the private property.

Very truly yours,


MIKE GREELY
Attorney General

MG/GS/gd
42/96/2



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

EXHIBIT NO. 2
DATE 1/22/91
SB97

BILL # SB-97; TESTIMONY BY: Lorna Frank

DATE Jan. 22, 1991; SUPPORT Yes; OPPOSE _____

Mr. Chairman, members of the committee, I am Lorna Frank, prerepresenting over 4,000 Farm Bureau members in the state.

We believe SB-97 addresses the problem many farmers/ranchers, counties and the public have with orange painted posts along public roads, and the withholding of road tax money.

Where there are no fences some individuals have driven off the road into private fields. With the signs along the road as described in this bill, people will know the land along the road is private property and posted.

Also the highway department will know the road beyond the sign is a public road and will not withhold the road tax monies due to the counties.

While this may not be the complete answer, it will definitely solve some of the problem. We urge this committee to give SB-97 a do pass recommendation.

SIGNED: _____

Lorna Frank

SB 97
January 22, 1991

SENATE FISH AND GAME
EXHIBIT NO. 3
DATE 1/22/91
BILL NO. SB 97

Testimony presented by K. L. Cool, Dept. of Fish, Wildlife & Parks

This legislation provides specific requirements for the proper posting of private land through which the public has a legal right of way.

Our department supports the procedure embodied in SB 97 because these procedures provide a solution to a problem identified in a previous Attorney General's opinion.

The bill also provides that enforcement of Section 45-6-201 shall be accomplished by the Department of Fish, Wildlife & Parks.

Because our department currently has this authority and responsibility, we feel the added enforcement provision is redundant. The enforcement provision should not put our officers in the position of judging whether a road through private land is a public right of way or not. This responsibility currently is (and should be) vested in the County Attorney, who is empowered to make a determination of a road's status when deciding whether or not to prosecute for a trespass violation. The court then provides the final decision on the legal status of the road.

We therefore request that Senator Beck and this committee consider the attached amendment which would eliminate redundant and possibly confusing language.

AMENDMENT TO SB 97
INTRODUCED (WHITE) COPY

1. Page 3, lines 17 and 18

Strike: "The department shall enforce the posting provisions set out in subsections (2) and (3)."

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By Bob Williams, on January 24, 1991, at 1:00 P.M.

ROLL CALL

Members Present:

Bob Williams, Chairman (D)
Don Bianchi, Vice Chairman (D)
John Jr. Anderson (R)
Eve Franklin (D)
Lorents Grosfield (R)
Greg Jergeson (D)
Dick Pinsoneault (D)
David Rye (R)
Paul Svrcek (D)
Bernie Swift (R)

Members Excused: None

Staff Present: Andrea Merrill (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Chairman Williams announced the only order of business was to hear HB 17 and Executive Action on SB 13.

Executive Action on SB 97 will be heard Tuesday, January 29 in order for Legislative Council to consider amendments presented. See Exhibit No. 2.

HEARING ON HOUSE BILL NO. 17

Presentation and Opening Statement by Sponsor: Bob Ream, Representative of Dist. No. 54, introduces this bill on behalf of the Montana Bowhunters Assn. The statutes state that the Commission already has the authority to regulate bow hunting in Montana; however, due to the extensive innovations that have come to archery equipment we feel it is necessary to make explicit that the Commission has the right to regulate such equipment.

Amendments to Senate Bill No. 97
First Reading Copy

Requested by Senator Grosfield
For the Committee on Fish & Game

Prepared by Doug Sternberg
January 22, 1991

1. Title, line 7.
Strike: "ENFORCE"
Insert: "PROVIDE INFORMATION REGARDING"
2. Page 1, line 11.
Following: "that"
Insert: "unfenced"
3. Page 2, line 8.
Following: "posting of"
Insert: "private roads or fenced"
4. Page 2, line 9.
Strike: "through which the public has no right-of-way"
5. Page 2, line 21.
Following: "line"
Insert: ", or, in the case of a private road, at the point where
the private road begins"
6. Page 2, line 22.
Following: "posting of"
Insert: "unfenced"
7. Page 2, line 25.
Strike: "on"
Insert: "within 30 feet of"
8. Page 3, line 1.
Strike: "upon entering"
Insert: "where it enters"
Following: "stating"
Insert: "words substantially similar to"
9. Page 3, line 3.
Strike: "conventional no trespassing signs"
Insert: "notice, as described in subsection (2)(a), within 30
feet of the edge of the roadway"
10. Page 3, line 4.
Following: "intervals"
Insert: "of not less than one-fourth mile"
Following: "along the"
Strike: "private land bordering the road"
Insert: "roadway where it borders unfenced private land"

11. Page 3, lines 17 and 18.

Strike: "The department shall enforce the posting provisions set out in subsections (2) and (3)."

Insert: "In the interests of providing the public with clear information regarding the public nature of certain unfenced rural rights-of-way, the department may develop and distribute posting signs that satisfy the requirements of subsection (3)."

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By Senator Bob Williams, on January 29, 1991, at 1:00 P.M.

ROLL CALL

Members Present:

Bob Williams, Chairman (D)
Don Bianchi, Vice Chairman (D)
John Jr. Anderson (R)
Eve Franklin (D)
Lorents Grosfield (R)
Greg Jergeson (D)
Dick Pinsoneault (D)
David Rye (R)
Paul Svrcek (D)
Bernie Swift (R)

Members Excused: None

Staff Present: Andrea Merrill (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Roll was taken and noted.

HEARING ON SB 97

Presentation and Opening Statement by Sponsor:

The hearing is a continuation from January 22, 1991 to allow Legislative Council Staff, Andrea Merrill, to peruse the amendments offered by Senator Grosfield.

Closing by Sponsor:

Senator Beck recommended that the Committee pass SB 97.

EXECUTIVE ACTION ON SB 97Amendments, Discussion, and Votes:

Senator Grosfield gave detailed explanations of the suggested amendments. See Exhibit No. 1.

Senator Jergeson questioned Senator Grosfield about the change in the amendments that the Department merely provide information regarding public and private land. Who then would be enforcing the posting provision? Senator Grosfield stated that the present statute can be enforced by either the sheriff or Fish and Game wardens. Senator Jergeson further questioned Senator Grosfield if the department chose not to distribute the posting signs, would this relieve the landowner of responsibility of posting according to the law? Senator Grosfield indicated that he did not think so.

Senator Jergeson asked if the Department would provide the signs free of charge or if they would be able to recover a portion of the cost of the signs. Senator Grosfield stated that this would be up to Department policy.

Bob Lane, Chief Legal Council, Fish, Wildlife and Parks, stated that the distance from the road was not addressed (that is flexible). What they intended to clear-up was posting a private marking right at the intersection. The posting needs to be clearly marked so that the traveling public does not get the wrong idea of what is a public or private roadway.

Gordon Morris, Executive Director, Montana Association of Counties, suggests that the distinction between unfenced and fenced leaves a question as to what the Attorney General says is the problem. The posting must be consistent in such a way as to leave no doubt as to private property and a public roadway. He believes SB 97 comes very close to doing this.

Senator Grosfield sympathizes with the counties because "Joe Rancher" is not posting his land correctly; therefore, the Department of Revenue is withholding federal gas tax funds. It also becomes a Fish and Game issue because the sportsman does not know what is posted and unposted land. This situation should be taken care of by the Attorney General's opinion because it states orange marking cannot be placed where a public roadway enters private land.

Senator Svrcek questions why a sign could not be put up that stated "this land is posted--the road is public." Senator Beck responded that he wishes to make things as simple as possible. Signs last a very short time.

Chairman Williams called on Director Cool to give the Department's viewpoint as to this issue. Director Cool stated that this is a Fish and Game issue and will have a major impact on sportsmen. He feels that the Department has a responsibility to educate sportsmen through their brochures and explain the complexities of this issue. However, even though the Department has a policy of providing signs to facilitate and manage public access under the Block Management Program; this amendment as proposed would require for the first time that the Department produce and provide signs to restrict access. The Department does not feel that they should be required to provide these signs to restrict access to private property.

Senator Beck commented that the Forest Service has signs everywhere which state that a particular road is public and is accepted in the western part of the State.

Director Cool commented if the Department could produce a sign that would better identify to sportsmen where a road was public, they would be more than happy to do it. The concern is the Department does not believe they have the technical ability to determine which roads are public and which are private and should not be looked upon to do that. He said that there had been a group of unscrupulous sportsmen who had moved the Department's signs to indicate that the public land was in fact private and no hunting allowed.

Senator Svrcek made a request to separate and vote on amendments 2-7 and amendments 1 & 8.

Senator Grosfield made the motion to divide the amendments as requested by Senator Svrcek. Motion carried.

Chairman Williams called for a vote on amendments 2-7. Unanimous vote.

Senator Grosfield made the motion to approve amendments 1 & 8. Ms. Merrill suggested that the title of the bill could be improved by rewording. See Exhibit 2.

Chairman Williams called for a motion to approve amendments 1 & 8 as suggested by Legislative Council. Motion carried. Chairman William called for a vote on amendments 1 & 8. Unanimous vote.

Recommendation and Vote:

Chairman Williams made the motion to pass SB 97 as amended. Unanimous vote.

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
January 30, 1991

MR. PRESIDENT:

We, your committee on Fish and Game having had under consideration Senate Bill No. 97 (first reading copy -- white), respectfully report that Senate Bill No. 97 be amended and as so amended do pass:

1. Title, line 6.

Strike: "REQUIRING"

Insert: "ALLOWING"

2. Title, line 7.

Strike: "ENFORCE"

Insert: "PROVIDE INFORMATION REGARDING"

3. Page 1, line 11.

Following: "that"

Insert: "unfenced"

4. Page 2, line 23.

Following: "which"

Insert: "or along which"

Following: "has"

Strike: "the"

Insert: "an unfenced"

5. Page 2, line 25.

Strike: "on"

Insert: "within 30 feet of"

6. Page 3, line 1.

Strike: "upon entering"

Insert: "where it enters"

Following: "stating"

Insert: "words substantially similar to"

7. Page 3, line 3.

Strike: "conventional no trespassing signs"

Insert: "notice, as described in subsection (2)(a), within 30 feet of the edge of the roadway"

8. Page 3, line 4.

Following: "intervals"

Insert: "of not less than one-fourth mile"

Following: "along the"

Strike: "private land bordering the road"

Insert: "roadway where it borders unfenced private land, except
that orange markings may not be placed on posts where the
public roadway enters the private land"

9. Page 3, lines 17 and 18.

Strike: "The department shall enforce the posting provisions set
out in subsections (2) and (3)."

Insert: "In the interests of providing the public with clear
information regarding the public nature of certain unfenced
rural rights-of-way, the department may develop and
distribute posting signs that satisfy the requirements of
subsection (3)."

Signed: _____

Bob Williams, Chairman

[Signature]
Ad. Coord.

SP-1/30 1:30
Sec. of Senate

Amendments to Senate Bill No. 97
First Reading Copy

Requested by Senator Grosfield
For the Committee on Fish & Game

Prepared by Andrea Merrill

January 29, 1991

1. Title, line 7.

Strike: "ENFORCE"

Insert: "PROVIDE INFORMATION REGARDING"

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Insert: "In the interests of providing the public with clear

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Insert: "roadway where it borders unfenced private land, except that orange markings may not be placed on posts where the public roadway enters the private land"

9. Page 3, lines 17 and 18.

Strike: "The department shall enforce the posting provisions set out in subsections (2) and (3)."

Insert: "In the interests of providing the public with clear information regarding the public nature of certain unfenced rural rights-of-way, the department may develop and distribute posting signs that satisfy the requirements of subsection (3)."

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By CHAIRMAN JIM ELLIOTT, on March 5, 1991, at
3:15 p.m.

ROLL CALL

Members Present:

Jim Elliott, Chairman (D)
John Johnson, Vice-Chairman (D)
Beverly Barnhart (D)
Fred "Fritz" Daily (D)
Roger DeBruycker (R)
Orval Ellison (R)
Gary Forrester (D)
Bob Gilbert (R)
Marian Hanson (R)
Vernon Keller (R)
Bea McCarthy (D)
Bruce Measure (D)
John Phillips (R)
Ted Schye (D)
John Scott (D)
Wilbur Spring (R)
Bill Strizich (D)

Staff Present: Doug Sternberg, Legislative Council
Ginger Puntenney, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON SENATE JOINT RESOLUTION 13

Presentation and Opening Statement by Sponsor:

SEN. GREG JERGESON, Senate District 8, Chinook, said citizens of these communities petitioned congress to amend the Nez Perce National Historical Parks legislation to include the Bear Paw Battlefield, Big Hole Battlefield, Fort Fizzle, and Canyon Creek sites in Montana.

Proponents' Testimony:

Mr. K.L. Cool, FWP, supports SJR 13. EXHIBIT 1

Opponents' Testimony: None

Informational Testimony:

Mike Simpson, Montana Outfitters and Guide Association, said HB 583, HB 185, and HB 171 should be considered jointly.

Questions From Committee Members:

REP. MCCARTHY asked what is included in a sportsman license. Mr. Cool said they would make a list to give to the committee. REP. MCCARTHY asked what license fee increases are based on. Mr. Cool said license fees are normally based on a cost/demand formula, but that is not done in the case of resident fees. It is based on a reasonable fee increase that the department thought Montana residents would support. In most cases the fees are lower than in surrounding states. REP. PHILLIPS asked what the percentage of earmarked money is in HB 526. Mr. Cool said 2.9 % annually. That would leave approximately \$1.1 million additional money for the upland bird program, waterfowl program, bighorn sheep, etc. REP. PHILLIPS asked why upland game birds are not on this list. Mr. Cool said to increase upland bird fees would reduce the number of participants. REP. PHILLIPS asked if the committee could get a printout on the earned revenue from each licensed area. Mr. Cool said yes. REP. BARNHART asked how many hunters there are in Montana and how many people attended these public hearings. Mr. Cool said there are approximately 400,000 licenses issued in Montana, but it is hard to get people involved in these public hearings. Due to extensive publicity by the department regarding these public hearings, they feel the response was good and the comments ran 4 to 1 in favor of license increases. REP. ELLIOTT asked for an explanation of the legislative fiscal analyst's report. Mr. Mott said the LFA removed from the department's budget a number of ongoing programs and cut 12 to 15 employees, so this made the department's financial picture look better. After meeting with the appropriations subcommittee, these programs will not be cut. REP. PHILLIPS said on the fiscal note the 1992 figures show a 6% increase instead of a 10% increase as stated earlier. Mr. Mott said it is how the license year lines up with the fiscal year or effective date of the bill. The license fees will not go into effect until March 1, 1992, so there would only be 3 or 4 months of increased revenue. The second year of the increase would be more accurate. After March 1994 the average increase would be 25%, to include resident and nonresident licenses.

Hearing on HB 171 will be continued March 7, 1991.

HEARING ON SENATE BILL 97**Presentation and Opening Statement by Sponsor:**

SEN. TOM BECK, House District 24, Deer Lodge, said this legislation provides specific requirements for the proper posting of private land through which the public has a legal right-of-

way. It will affect posting of land throughout Montana. The Attorney General's opinion was cited by SEN. BECK. EXHIBIT 13

Proponents' Testimony:

Gordon Morris supports this bill. EXHIBIT 14

Robert VanDerVere supports this bill.

Pat Graham, FWP, supports this bill. EXHIBIT 15

Lorna Frank, Farm Bureau, supports this bill.

Opponents' Testimony: none

Questions From Committee Members:

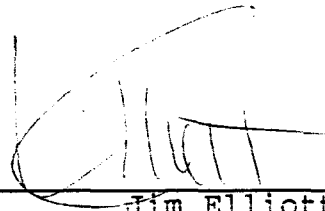
REP. PHILLIPS said the language, providing that the department "may develop and distribute posting signs" is vague. Mr. Graham said the department is not obligated to provide posting signs, but only has the discretion to provide signs. The department would consider providing signs where they would aid in cooperative land management objectives with private landowners.

Closing by Sponsor:

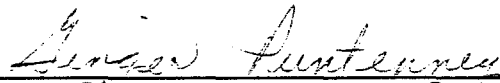
SEN. BECK urged support of SB 97.

ADJOURNMENT

Adjournment: 5:00 p.m.



Jim Elliott, Chair



Ginger Punttenney, Secretary

JE/gp

HOUSE OF REPRESENTATIVES

FISH AND GAME COMMITTEE

ROLL CALL

DATE 3-5-91

NAME	PRESENT	ABSENT	EXCUSED
REP. JOHN JOHNSON, VICE-CHAIRMAN	✓		
REP. BEVERLY BARNHART	✓		
REP. FRED "FRITZ" DAILY	✓		
REP. ROGER DEBRUYCKER	✓		
REP. ORVAL ELLISON	✓		
REP. GARY FORRESTER	✓		
REP. BOB GILBERT	✓		
REP. MARIAN HANSON	✓		
REP. VERNON KELLER	✓		
REP. BEA MCCARTHY	✓		
REP. BRUCE MEASURE	✓		
REP. JOHN PHILLIPS	✓		
REP. TED SCHYE	✓		
REP. JOHN SCOTT	✓		
REP. WILBUR SPRING	✓		
REP. BILL STRIZICH	✓		
REP. JIM ELLIOTT, CHAIRMAN	✓		

CS05FISH&G.MAN

Crosby Attorney General Opinion
2210 E. 6th Helena, Montana

VOLUME NO. 42

OPINION NO. 96

HIGHWAYS - "No Trespassing" notice along unfenced private property lying adjacent to county road;

TRESPASS - Use of "No Trespassing" notice on unfenced property lying adjacent to public road;

MONTANA CODE ANNOTATED - Section 45-6-201.

HELD: Private property that is unfenced along public roadways may not be closed to public access through the use of orange markings placed on posts located where the road enters the private property.

13 July 1988

Wm. Nels Swandal
Park County Attorney
Park County Courthouse
Livingston MT 59047

Dear Mr. Swandal:

You have asked my opinion on the following question:

May "No Trespassing" notices be placed within a county road right-of-way on the posts of a fenceline that lies perpendicular to the road and delineates private property that a landowner desires to close to public access?

Your opinion request evolved through the interaction of three groups: landowners who desire to post their property in compliance with the revised criminal no-trespassing statute, § 45-6-201, MCA; sportsmen who desire enhanced public access and claim the "No Trespassing" signs mislead the public; and Park County officials who seek to settle the dispute while protecting the integrity of the county road right-of-way.

The county roads in question are public rights-of-way that run through private property that is unfenced along the roadway. Occasionally the roadways cross a property line that divides two parcels held in separate ownership. On these property lines the landowners erect fences, often in conjunction with stock gates across the road surface. The fences separate one grazing field from another, but the county road that bisects the open pasture is otherwise unfenced along its route.

The owners of these pastures have adopted an easy method of posting their fields closed to trespassing. Upon the assumption that the point at which the public road crosses the fenceline and cattle gate is an access

point, the owners have painted orange the posts on either side of the grate. This assumption is based upon the revised criminal trespass statute, § 45-6-201, MCA. That statute provides that orange paint on fence posts may be used to give notice of no trespassing. The statute contains several requirements that must be met before property is considered closed. One such requirement is that each "normal point of access" must be posted with the proper amount of orange paint. Apparently, the landowners have attempted to convey to motorists that the property on either side of the road, following the orange marking, is closed to the public.

The immediate problem with this practice of posting is that orange paint on either side of an entry through a fenceline typically indicates that all property beyond the marking is closed to access. On similar facts the Montana Supreme Court recently upheld the criminal trespass conviction of a motorist who inadvertently drove down a road through a gate marked with orange paint. State v. Blalock, 45 St. Rptr. 1008, ___ P.2d ___ (1988). The landowners in your request are unable to convey through their orange marking that a motorist may cross the fenceline, enter the next field, stay on the roadway and not actually trespass. As the sportsmen's group has brought to your attention, this form of posting will likely mislead the public.

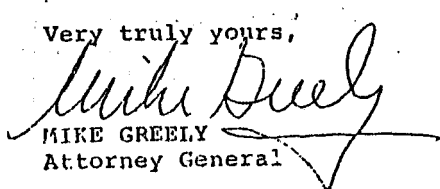
The landowners' intent here is clear. Unfortunately, the liberal posting requirements of the revised criminal trespass statute were not designed for application to the present situation. I doubt that the Legislature anticipated or contemplated the factual situation of an unfenced public right-of-way crossing fields that landowners wanted closed. The points of access for these fields actually run the entire length of the unfenced public road. The situation simply does not lend itself to easy and unambiguous posting.

Landowners who desire the result of effective posting without additional fence construction must therefore pursue alternatives to orange markings. One alternative would be to place a conspicuous sign on the roadway's edge upon entering the private property stating "Private Property, No Trespassing Next ___ Miles." Another alternative would be to place conventional "No Trespassing" signs at regular intervals along the private property bordering the road. In any case, the present practice of painting the posts adjoining the roadway at a fenceline is a misapplication of the notice provisions of section 45-6-201, MCA. The misapplication not only fails to legally close the adjacent property to trespassing but also inhibits the public's use and enjoyment of the road.

THEREFORE, IT IS MY OPINION:

Private property that is unfenced along public roadways may not be closed to public access through the use of orange markings placed on posts located where the road enters the private property.

Very truly yours,


MIKE GREELEY
Attorney General

MG/GS/gd
42/96/2

NOV 01 1990

SUPERIOR CLIPPING SERVICE
Billings, MT 59105-0789

Signs must be in proper places

By DEB DION

Ranger-Review Staff Writer

Improper hanging of signs by landowners in Dawson County will result in the loss of state funding for county roads, if the problem is not corrected soon.

The county commissioners, in an effort to clear up the problem, are reminding all land owners to post "No Hunting" and other signs on private property and parallel with the road, not on the county right of way.

This means signs can be posted on private fences parallel with the road but they cannot be posted on the county right of way or on fences or

cattle guards that run across the road.

The reason for this is the county is paid mileage by the state for maintaining county roads and if the signs are posted on the county road or if they indicate that the road is private, the county is not paid for maintaining that road, according to information from the commissioners.

Sometimes the signs are placed to restrict access off the road, but the highway department says the signs in effect indicate the road is closed.

Private driveways and roads can be marked with orange posts or signs can be placed on posts that cross the road.

The State Department of Highways stated in a letter to the commissioners the signing problem must be resolved in order to have the roads restored to the rural road system.

One solution would be to remove the signs and replace them with signs which read "Public road through

private land for next (number) miles."

This indicates the road is open for public travel but trespassing off the road is forbidden. Another solution would be to just remove the signs.

The commissioners said they need to explain the problem that state funding will be withheld for roads that have improper signing. Commissioner Burt Oliphant said many of the signs are posted on cattle guards, which is probably the easiest place to put them and the signs are most likely to be seen there; but if the cattle guard is across a county road then the sign is improperly placed there.

The letter from the highway department states when the signing problems are corrected and Dawson County has informed the highway department that the corrections have been made, then the affected road mileage will be added to the Dawson County rural road system.

EXHIBIT

14

DATE 3-5-91

SB 97

SB 97
March 5, 1991

Testimony presented by Pat Graham, Dept. of Fish, Wildlife & Parks
to House Fish and Game Committee

This legislation provides specific requirements for the proper posting of private land through which the public has a legal right-of-way.

Our department supports the procedure embodied in SB 97 because these procedures provide a solution to a problem identified in a previous Attorney General's opinion. This bill will establish a method of posting unfenced private land through which or along which there is a public right-of-way. The Attorney General ruled that unfenced private property along public roadways could not be closed to public access by using orange marking on posts located where the road enters private property. The Attorney General reasoned that the use of orange marking might lead the public to believe that the roadway itself was private and closed.

The department worked with the Senate Fish and Game Committee on amendments to more precisely correct the defect in the present law. With one reservation, we supported the amendments that were adopted in the Senate. We do not believe the language on page 4, providing that the department "may develop and distribute posting signs" is necessary. We do not object to this language, however, as long as it is clear that the department is not obligated to provide posting signs, but only has the discretion to provide such signs.

For example, the department presently has a policy of providing signs to facilitate and manage public access under block management and in some other appropriate circumstances. The department would consider providing signs where they would aid in cooperative land management objectives with private landowners.

The department supports SB 97 as providing private landowners with a clear and reasonable means of posting unfenced land along public rights-of-way.

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Fish & Game COMMITTEE BILL NO. SB 97
DATE 3-5-91 SPONSOR(S) Beck

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Gordon Morris	MAA	✓	
Lorna Frank	Farm Bureau	✓	
Tony Schreiner	So/5	✓	
Stan Brooker	MTU	✓	
Marvin Barber	A.P.A.	✓	
Pat Graham	DFW.F	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By CHAIRMAN JIM ELLIOTT, on March 7, 1991, at
3:15 p.m.

ROLL CALL

Members Present:

Jim Elliott, Chairman (D)
John Johnson, Vice-Chairman (D)
Beverly Barnhart (D)
Fred "Fritz" Daily (D)
Roger DeBruycker (R)
Orval Ellison (R)
Gary Forrester (D)
Bob Gilbert (R)
Marian Hanson (R)
Vernon Keller (R)
Bruce Measure (D)
John Phillips (R)
Ted Schye (D)
John Scott (D)
Wilbur Spring (R)
Bill Strizich (D)

Members Excused: Bea McCarthy (D)

Staff Present: Doug Sternberg, Legislative Council
Ginger Puntenney, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON SENATE BILL 171 (CONTINUED FROM MARCH 5)

Proponents' Testimony:

REP. GRADY urged passage of SB 171. **EXHIBIT 1**

Bob Bugni, Prickly Pear Sportsmen's Association, supports this
bill. **EXHIBIT 2**

Bill Stratton, Fish, Wildlife, and Parks Commission, said the
people of Montana favor these fee increases. Surrounding states
have higher hunting and fishing fees. These increases are needed

Motion: REP. BARNHART MOVED HB 833 DO PASS AS AMENDED.

REP. BARNHART wanted to know if this bill will control the noise levels on all lakes. REP. LEE said this bill would affect noise levels on all waters in the state.

Vote: HB 833 DO PASS AS AMENDED. Motion carried 8 - 7.

EXHIBIT 7

EXECUTIVE ACTION ON SENATE BILL 97

Motion/Vote:

REP. DEBRUYCKER MOVED SB 97 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 171

Motion: REP. SCHYE MOVED SB 171 BE CONCURRED IN.

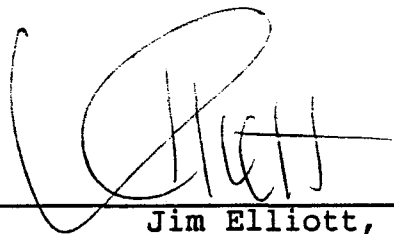
Discussion:

CHAIRMAN ELLIOTT said this bill and the other bills which increase out-of-state licenses in the state of Montana are entirely different issues which coincidentally both raise fees. He said these bills raise money for the state, so it is his intent not to put this bill into a subcommittee. The committee has heard two days of testimony on this bill and the bill has been through a full Senate hearing, so now is an appropriate time to take action. REPS. BARNHART, PHILLIPS, AND GILBERT said action should be delayed as more facts and figures are needed. CHAIRMAN ELLIOTT said it appears that the consensus of this committee is that they want more time to research this bill. This bill will be acted upon on Monday, March 11.

REP. SCHYE withdrew his motion.

ADJOURNMENT

Adjournment: 5:00 p.m.



Jim Elliott, Chair



Ginger Punttenney, Secretary

JE/gp

HOUSE OF REPRESENTATIVES

FISH AND GAME COMMITTEE

ROLL CALL

DATE 3-7-91

NAME	PRESENT	ABSENT	EXCUSED
REP. JOHN JOHNSON, VICE-CHAIRMAN	✓		
REP. BEVERLY BARNHART	✓		
REP. FRED "FRITZ" DAILY	✓		
REP. ROGER DEBRUYCKER	✓		
REP. ORVAL ELLISON	✓		
REP. GARY FORRESTER	✓		
REP. BOB GILBERT	✓		
REP. MARIAN HANSON	✓		
REP. VERNON KELLER	✓		
REP. BEA MCCARTHY			✓
REP. BRUCE MEASURE	✓		
REP. JOHN PHILLIPS	✓		
REP. TED SCHYE	✓		
REP. JOHN SCOTT	✓		
REP. WILBUR SPRING	✓		
REP. BILL STRIZICH	✓		
REP. JIM ELLIOTT, CHAIRMAN	✓		

CS05FISH&G.MAN

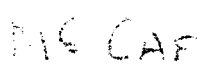
HOUSE STANDING COMMITTEE REPORT

March 8, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that Senate Bill 97 (third reading copy -- blue) be concurred in.

Signed: 
Jim Elliott, Chairman

Carried by: Rep.  CAFFREY

SENATE BILL NO. 97

INTRODUCED BY T. BECK, MCCAFFREE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING PROCEDURES FOR THE POSTING OF PRIVATE LAND ALONG PUBLIC ROADS; REQUIRING ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ENFORCE PROVIDE INFORMATION REGARDING POSTING REQUIREMENTS; AND AMENDING SECTION 45-6-201, MCA."

WHEREAS, the Attorney General in 42 A.G. Op. 96 (1988), held that UNFENCED private property along public roadways may not be closed to public access through the use of orange markings placed on posts located where the road enters the private property; and

WHEREAS, the Legislature desires to address the problem of adequate posting of private land while ensuring proper public access to public roads and the proper inclusion of county road mileage for gas tax purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-6-201, MCA, is amended to read:

"45-6-201. Definition of "enter or remain unlawfully".

(1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when he is not licensed, invited, or otherwise privileged to do so.

Privilege to enter or remain upon land is extended either by the explicit permission of the landowner or other authorized person or by the failure of the landowner or other authorized person to post notice denying entry onto private land. ~~Such~~ The privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.

(2) To be provide for effective posting of private land through which the public has no right-of-way under--this section, the notice provided for in subsection (1) must satisfy the following requirements:

(a) notice must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal fenceposts are used, the entire post must be painted; and

(b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of access to the property, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(3) To provide for effective posting of private land through which OR ALONG WHICH the public has the AN UNFENCED right-of-way by means of a public road, a landowner shall:

(a) place a conspicuous sign on WITHIN--30- FEET NO

1 CLOSER THAN 30 FEET OF THE CENTERLINE OF the edge--of--the
 2 roadway upon--entering WHERE IT ENTERS the private land,
 3 stating WORDS SUBSTANTIALLY SIMILAR TO "PRIVATE PROPERTY, NO
 4 TRESPASSING OFF ROAD NEXT MILES"; or

5 (b) place conventional-no-trespassing-signs NOTICE, AS
 6 DESCRIBED IN SUBSECTION (2)(A), WITHIN-30-FEET-OF-THE-EDGE
 7 NO CLOSER THAN 30 FEET OF THE CENTERLINE OF THE ROADWAY at
 8 regular intervals OF NOT LESS THAN ONE-FOURTH MILE along the
 9 private--land--bordering--the--road ROADWAY WHERE IT BORDERS
 10 UNFENCED PRIVATE LAND, EXCEPT THAT ORANGE MARKINGS MAY NOT
 11 BE PLACED ON POSTS WHERE THE PUBLIC ROADWAY ENTERS THE
 12 PRIVATE LAND.

13 {3}{4} If property has been posted in substantial
 14 compliance with subsection (2) or (3), it is considered
 15 closed to public access unless explicit permission to enter
 16 is given by the landowner or his authorized agent.

17 {4}{5} The department of fish, wildlife, and parks
 18 shall attempt to educate and inform all persons holding
 19 hunting, fishing, or trapping licenses or permits by
 20 including on any publication concerning such the licenses or
 21 permits, in condensed form, the provisions of this section
 22 concerning entry on private land. The department shall use
 23 public media, as well as its own publications, in attempting
 24 to educate and inform other recreational users of the
 25 provisions of this section. The-department-shall-enforce-the

1 posting-provisions-set-out-in-subsections-{2}--and--{3}; IN
 2 THE INTERESTS OF PROVIDING THE PUBLIC WITH CLEAR INFORMATION
 3 REGARDING THE PUBLIC NATURE OF CERTAIN UNFENCED RURAL
 4 RIGHTS-OF-WAY, THE DEPARTMENT MAY DEVELOP AND DISTRIBUTE
 5 POSTING SIGNS THAT SATISFY THE REQUIREMENTS OF SUBSECTION
 6 (3).

7 {5}{6} For purposes of this section, "land" means land
 8 as defined in 70-15-102.

9 {6}{7} In no event ~~shall~~ may civil liability be imposed
 10 upon the owner or occupier of premises by reason of any
 11 privilege created by this section."

-End-